

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER 06-0089
RESPONSIBLE OFFICER
WITHHOLDING TAX
For Tax Period July 2005-October 2005

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Issue

I. Withholding Tax -Responsible Officer Liability

Authority: IC § 6-3-4-8(g); IC § 6-8.1-5-1(b).

The taxpayer protests the assessment of corporate withholding taxes against him as a responsible officer.

Statement of Facts

The taxpayer was an officer of a corporation that did not remit withholding taxes to Indiana for the tax period July 2005 through October 2005. The Indiana Department of Revenue assessed the outstanding corporate withholding taxes, interest, and penalty against the taxpayer personally. The taxpayer protested the assessment and a hearing was held. This Letter of Findings results.

I. Withholding Tax -Responsible Officer Liability

Discussion

The proposed withholding taxes were assessed against the taxpayer pursuant to IC § 6-3-4-8(g), which provides that, "In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest."

Indiana Department of Revenue assessments are prima facie evidence that the tax assessment is correct. The taxpayer bears the burden of proving that the assessment is incorrect. IC § 6-8.1-5-1(b).

The taxpayer did not dispute that he was a party responsible for remittance of corporate trust taxes to the state. He argued that there was no corporate liability for withholding taxes. The

taxpayer offered adequate documentation to sustain his burden of proving that the corporation's last payroll was paid on May 20, 2005. Since the corporation did not collect any withholding taxes after May 20, 2005, it had no obligation to remit withholding taxes to the state for tax periods after that date.

Finding

The taxpayer's protest is sustained.

KMA/JMM/DK/06/30/03